

BEFORE LINDA McCULLOCH, STATE SUPERINTENDENT OF PUBLIC INSTRUCTION,
STATE OF MONTANA

S.D. and C. D.,)	
)	
Appellants,)	OSPI 300-05
)	
vs.)	DECISION AND ORDER
)	
BOZEMAN SCHOOL DISTRICT # 7)	
)	
BOARD OF TRUSTEES)	
)	
Respondent.)	
)	

Having reviewed the record and considered the parties' briefs, the Superintendent of Public Instruction issues the following Decision and Order.

DECISION AND ORDER

The March 25, 2005 Order Reaffirming Summary Ruling by Donna Maddux, Acting Gallatin County Superintendent of Schools granting Respondent's Motion for Summary Ruling in this matter is hereby vacated as an inappropriate ruling and this appeal is dismissed as all issues in controversy are moot.

PROCEDURAL HISTORY

This is an appeal by S.D. and C.D. on behalf of their son, T.D. (hereinafter "Appellants") of the Order Reaffirming Summary Ruling dated March 25, 2005 issued by Donna Maddux, Acting Gallatin County Superintendent of Schools.

Respondent, the Board of Trustees of Bozeman School District #7 (hereinafter "District") issued a decision on October 26, 2004 expelling Turner from school and offering him a suspended expulsion contract for one year. Appellants appealed the District's decision to the Gallatin County Superintendent of Schools. The District filed a Motion for Summary Ruling alleging that there were no genuine issues of material facts in dispute. On March 9, 2005, the Acting Gallatin County Superintendent issued an Order Granting Motion for Summary Ruling and dismissed the appeal. Appellants filed a Motion to Reconsider on March 17, 2005. The District filed a Response and the Acting Gallatin County Superintendent issued an Order Reaffirming Summary Ruling on March 25, 2005. The Appellants filed a Notice of Appeal from that Order with the State Superintendent of Public Instruction on April 25, 2005.

ISSUES ON APPEAL

The issues on appeal are:

1. Did the Acting County Superintendent err in concluding that no genuine issues of material fact exist?
2. Did the District's punishment of T.D. constitute an abuse of discretion?
3. Did the Acting County Superintendent's decision constitute bias and an abuse of discretion?
4. Are the issues on appeal moot?

STANDARD OF REVIEW

The State Superintendent's review of a county superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in Mont. Code Ann. §2-4-704 and adopted by the State Superintendent in Admin. R. Mont. 10.6.125.

1 Findings of fact are reviewed under a clearly erroneous standard and conclusions of law are
2 reviewed to determine if the correct standard of law was applied. *Harris v. Trustees, Cascade*
3 *County School Districts No. 6 and F, and Nancy Keenan*, 241 Mont. 274, 277, 786 P.2d 1164,
4 1166 (1990) and *Steer, Inc. v. Dept. of Revenue*, 245 Mont. 470, at 474, 803 P.2d 601, 603
5 (1990).

6 The State Superintendent may reverse or modify the county superintendent's decision if
7 substantial rights of the Appellant have been prejudiced because the findings of fact, conclusions
8 of law and order are (a) in violation of constitutional or statutory provisions; (b) in excess of the
9 statutory authority; (c) made upon unlawful procedure; (d) affected by other error of law; (e)
10 clearly erroneous in view of the reliable, probative and substantial evidence on the whole record;
11 (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise
12 of discretion; or (g) affected because findings of fact upon issues essential to the decision were
13 not made although requested. Admin. R. Mont. 10.6.125(4).
14
15

16 FINDINGS OF FACT

17 1. T.D. was a student at Bozeman High School in October of 2004 and participated
18 as a member of the Bozeman High School Varsity Football team.
19

20 2. T.D. and his father, S.D. executed an Extra-Curricular Chemical Use Policy on
21 June 9th and June 30th, 2004 respectively. (Ref. F attached to Appellants 11/18/04 appeal to
22 Gallatin County Superintendent of Schools hereinafter "county appeal") The policy provides
23 that the student "shall not use, have in possession, sell or distribute alcohol or illegal drugs" and
24 that the "student will not be at gatherings or functions where prohibited substances or chemicals
25 are being used illegally." This policy was in effect from the date of the first practice for fall

activities until the last date of school in June.

3. Appellants received notice of the school's policies at the beginning of the school year. Those policies included Policy 2334 and 2334P which provided that a student would be expelled for 90 days if found to be in the possession of illegal drugs or for 180 days if found to be in possession and with intent to distribute. These policies further provided that the board could impose a lesser penalty. (Part of Exhibit C attached to Respondent's brief)

4. The Bozeman High School football team played a game in Helena, Montana on October 11, 2004. During the post game meal, Turner and another student left the restaurant where the team was eating. Turner was found by the head football coach to be in possession of and using marijuana and marijuana paraphernalia. (Ref. G attached to Appellants "county appeal")

5. Turner was suspended from school and from the football team and referred for expulsion. (Exhibit B to the District's Motion for Summary Ruling)

6. An expulsion hearing was held by the District on October 26, 2004. (Exhibit C to the District's Motion for Summary Ruling) Appellants were present at the hearing.

7. The District determined that rather than expelling Turner for 90 or 180 days they would allow Turner to return to Bozeman High School under the terms of a suspended expulsion contract for one year. (Exhibit D to the District's Motion for Summary Ruling)

8. Appellants signed the contract and Turner returned to Bozeman High School on October 28, 2004. (Exhibit E to the District's Motion for Summary Ruling)

9. Appellants voluntarily withdrew Turner from Bozeman schools on November 8, 2004. (Exhibit F to the District's Motion for Summary Ruling)

10. Appellants relocated to West Lafayette, Indiana where Turner is enrolled in high

1 school.

3 CONCLUSIONS OF LAW

4 The State Superintendent will first address the question of mootness because,
5 "[m]ootness is a threshold issue which must be resolved before addressing the underlying
6 dispute." *Grabow v. Montana High School Association*, 300 Mont. 227, 3 P.3d 650.

7 The District argues that Appellants' appeal is now moot due to the fact that Turner was
8 voluntarily withdrawn from Bozeman High School and is currently enrolled at West Lafayette
9 High School in Indiana. Appellants argue that the District's argument must fail because "it
10 asserts Appellants only relief is a return to Bozeman High." They further allege that they were
11 "compelled" to withdraw Turner from Bozeman High to mitigate damages.

12 Appellants contend that Policy 3330 should have been applied which would have had the
13 effect of eliminating Turner from the remainder of the football season, but would enable him to
14 participate in basketball. Turner was already back in school under the expulsion contract,
15 therefore it would have been a simple matter of eliminating the expulsion from Turner's record,
16 had the County Superintendent determined that Policy 3330 controlled. With the hearing at the
17 County Superintendent level scheduled for May 17, 2005, this would effectively eliminate
18 Turner from athletics until after the spring season. Therefore the only "damage" which Turner
19 suffered that could not be resolved by the County Superintendent's decision in their favor was
20 that he was not allowed to participate in athletics for the rest of the 2004-05 school year.

21 In determining mootness the Montana Supreme Court uses the "capable of repetition, yet
22 evading review" doctrine. *School District No. 4 Forsyth v. Board of Personnel Appeals*, 214
23 Mont. 361, 692 P.2d 1261.

1 "This doctrine is limited to a situation where two elements are combined:
2 (1) the challenged action was in its duration too short to be fully litigated prior to
3 the cessation or expiration; and (2) there was a reasonable expectation the same
4 complaining party would be subjected to the same action again." *School District*
5 *No. 4 Forsyth v. Board of Personnel Appeals, supra*, at 1262.

6 In this case, although the expulsion period is for 365 days, this will likely be too short a
7 time for this matter to be fully litigated if Appellants appeal this decision to the District Court.
8 However, there is no "reasonable expectation the same complaining party would be subjected to
9 the same action again" due to the fact that Turner is no longer enrolled at Bozeman High School
10 and the family has apparently relocated to West Lafayette, Indiana. The Supreme Court's
11 decision in *School District No. 4 Forsyth, supra* is clear that both elements must be present in
12 order for the court not to declare the issue moot.

13 In *Grabow v. Montana High School Association, supra*, the Montana Supreme Court has
14 stated:

15 A matter is moot when, due to an event or happening, the issue has ceased to exist
16 and no longer presents an actual controversy. A question is moot when the court
17 cannot grant effective relief. If the parties cannot be restored to their original
18 position, the appeal becomes moot."

19 The Supreme Court has also held:

20 "In deciding whether a case is moot, we determine whether this Court can fashion
21 effective relief." *Graveyard Creek Ranch v. Bell*, 327 Mont. 491.

22 "A moot question is one which existed once but no longer presents an actual
23 controversy." *In Parenting of DD*, 110 P.3d 1055.

24 "A matter is moot when, due to an event or happening, the issue has ceased to
25 exist and no longer presents an actual controversy. *DeMeyer v. Miller*, 18 P.3d
1031.

26 In this case it is clear that the parties cannot be restored to their original position. In
27 order for this to happen the County Superintendent would have to order that the Board conduct a

1 new hearing and redetermine Turner's punishment. By the time this could be accomplished
2 Turner will likely be close to graduating from high school in West Lafayette, Indiana. He cannot
3 be restored to his junior year in high school nor would he be eligible to play high school athletics
4 at Bozeman High School.

5 Had Turner stayed at Bozeman High School he would have been eligible to participate in
6 athletics beginning with the 2005-2006 athletics season and this case would not be moot because
7 the same situation could have occurred again. This is not the case. Turner was voluntarily
8 withdrawn from the Bozeman School system and therefore no longer under the terms of the
9 expulsion contract.
10

11 The only relief that the State Superintendent can order is that the case be dismissed as
12 moot or that the case be remanded for hearing before the County Superintendent. Neither of
13 these actions would permit Turner to go back Bozeman High School and play high school
14 athletics.

15 Because of Appellants' decision to move to West Lafayette, Indiana the controversy over
16 Turner's expulsion no longer exists.

17 The State Superintendent declines to address issues 2 and 3 because this case is moot.
18 However, Issue No. 1 will be addressed to give guidance with regard to the procedures and
19 remedies allowed under school controversy law.
20

21 In considering a case on appeal the first duty of the County Superintendent is to
22 determine jurisdiction. ARM 10.6.104 Lack of jurisdiction was raised by the District in its
23 Response to the Notice of Appeal. Although no specific statement is made that the County
24 Superintendent determined she had jurisdiction, this is evident in the fact that she issued an order
25 for a Prehearing Conference Call.

Once jurisdiction is established the County Superintendent is required to "hear the appeal and take testimony in order to determine the facts related to the contested case." ARM 10.6.104

Chapter 6 of Title 10 of the Administrative Rules of Montana is very specific about the procedures to be followed by the County Superintendent in conducting an appeal. Nowhere in chapter 6 does it authorize the County Superintendent to dispose of an appeal by granting a Motion for Summary Judgment. The County Superintendent is required to hold a hearing and take testimony to determine the facts.

The State Superintendent concludes that summary judgment is an inappropriate disposition of an appeal under Title 10, chapter 6 of the Administrative Rules of Montana.

DECISION AND ORDER

The March 25, 2005 Order Reaffirming Summary Ruling by Donna Maddux, Acting Gallatin County Superintendent of Schools granting Respondent's Motion for Summary Ruling in this matter is hereby vacated as an inappropriate ruling and this appeal is dismissed as all issues in controversy are moot.

Dated this 18th day of October, 2005.

/s/ Linda McCulloch
Linda McCulloch
State Superintendent of Public Instruction

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 18th day of October, 2005, I caused a true and exact copy of the foregoing DECISION AND ORDER to be mailed, postage prepaid, to the following:

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